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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,917	03/02/2004	Martin B. Cantrell		1396
7590 David Allen Hall P.O. Box 1540 Blanco, TX 78606-1540		09/19/2007	EXAMINER CAJILIG, CHRISTINE T	
			ART UNIT 3637	PAPER NUMBER
			MAIL DATE 09/19/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/790,917	CANTRELL, MARTIN B.
	Examiner	Art Unit
	Christine T. Cajilig	3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 June 2007.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-3,6-9 and 11-13 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-3,6-9 and 11-13 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 26 March 2007 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The amendment filed 3/26/07 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: (1) Element "8" in Figures 2 and 2a, (2) new drawing sheet showing Figure 2b, and (3) new paragraph 15.1 describing new Figure 2b. There was no sufficient support in the originally filed disclosure to merit the changes in the replacement Figures 2 and 2a and in new Figure 2b as to the exact location of the conduit as well as the exact configuration of a terminal ornamentation.

Applicant is required to cancel the new matter in the reply to this Office Action.

The amendment is further objected to because the text of cancelled claims should be deleted in their entirety and labeled with the appropriate claim status identifier.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification does not mention "a second member" nor does the specification mention "an assembly of said first members into a second member."

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the phrase “said first members being interlocked with at least one mortise and tenon joint”. It is unclear to the examiner whether the first members are interlocked with a mortise and tenon joint, or if the applicant intends to recite that the first members are interlocked with a second member using a mortise and tenon joint. Furthermore, it is unclear if “an assembly of said first members” would form or create a second member (having the assembled first members) or if “an assembly of said first members” is somehow joined to another member, namely “a second member” and together, the first and second members receive a planar panel.

Claim 11 recites “A mortise comprised of two separate members *configured to receive a tenon*, said mortise *capturing said tenon*” (emphasis added). The language of claim 11 appears to refer to the tenon as merely intended use (in the “configured to language”) as well as positively claiming the tenon (in “said mortise capturing said tenon”). It is unclear if Applicant intends to claim a mortise comprised of two members per se, or a mortise comprised of two members, and a tenon.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6-9, and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Lew (US 4652170).

Regarding claim 1, Lew in Figures 5-7 discloses a system for partitioning space comprising a plurality of first members (28, a) having first and second ends and a plurality of surfaces, some of said first members being interlocked with each other with at least one tenon and mortise joint (d); and an assembly of said first members (28, a) into a second member (b) that receives at least one planar panel (23) having a plurality of edges.

Regarding claim 2, Lew further discloses that the system comprises two second members (b, c) that can receive different edges of one said panel.

Regarding claim 6, Lew further discloses that at least one said first members (28) has at least one end terminated with at least one ornamentation (33).

Regarding claim 7, Lew further discloses that at least one said first member (28) has at least one end terminated with at least one a functional accessory in the form of a screw or locking plug (top of 28 is capped with a screw plug of figure 5 which would function as a locking screw preventing sliding movement of the members).

Regarding claim 8, Lew further discloses that at least one said panel (23) has a conduit that receives the second member (b).

Regarding claim 9, Lew further discloses that at least one of said first members (28) contains a conduit along an edge that receives the second member (b).

Regarding claims 11-12, Lew in Figures 21 and 22 discloses a mortise comprised of two separate first members (A) form a mortise (87) configured to receive a tenon (84). The mortise (87) is a female dovetail slot and the tenon (84) is a male dovetail. The phrase of "when said members are pushed together" is regarded to as functional language, and while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Examiner refers Applicant to MPEP §2114. Furthermore, the structure of Lew is capable of performing the functions stated above and when the members (A) are pushed together, the members would act to further clamp the tenon that is captured in the mortise.

Regarding claim 13, Lew further discloses that said mortise and tenon joint is comprised of two separate members (A) configured to receive a tenon, said mortise capturing said tenon. The phrase of "when said members are pushed together" is regarded to as functional language, and while features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Examiner refers Applicant to MPEP §2114. Furthermore, the structure of Lew is capable of performing the functions

stated above and when the members (A) are pushed together, the members would act to further clamp the tenon that is captured in the mortise.

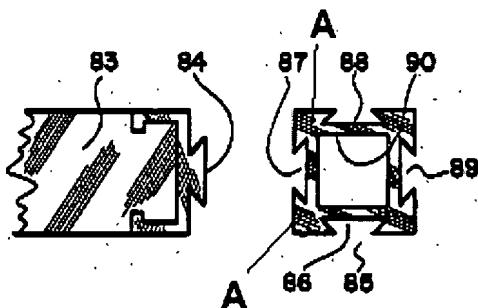
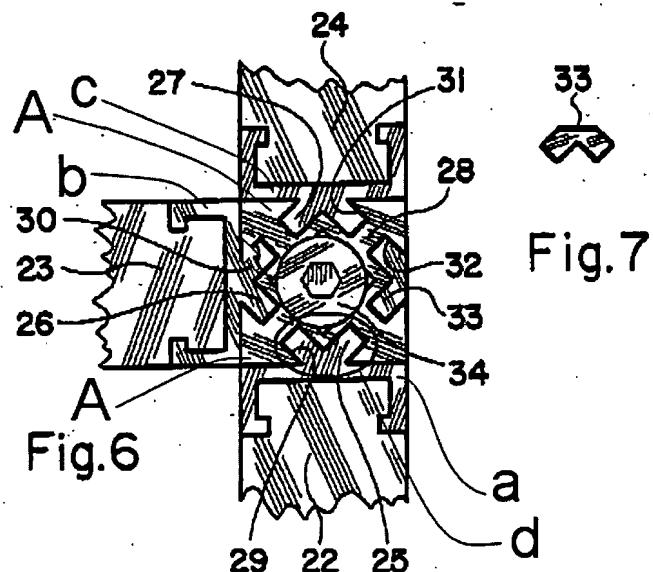
Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lew (US 4652170).

Regarding claim 3, Lew discloses the structure discussed above but does not disclose that the mortise and tenon joint is a dovetail joint. However, Lew also discloses alternate configurations of the joint and discloses a dovetail joint (as seen in Figures 21, 22). Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the Applicant's invention to modify the joint of Lew to have a dovetail joint as taught in Figures 21 and 22 of Lew to have a functionally equivalent dovetail joint that could be readily manufactured.



Lew (US 4652170)

Response to Arguments

Applicant's arguments with respect to amended claim 1 has been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 3/26/07 have been fully considered but they are not persuasive.

On page 10 of the Remarks, Applicant argues, "Lew makes no mention of partitioning space." However, the reference of Lew, although does not explicitly states the function of "for partitioning space," indeed inherently "partitions space" by via the assembly of panel boards to form compartments. Furthermore, the furniture of Lew refers to knockdown "system furniture" which is more commonly known as cubicle office furniture, which indeed partitions space.

On page 11 of Remarks, Applicant argues that claim 2 is not anticipated by Lew because "two second members...[are] each attached to a different edge of a single panel." However, as claimed, only one of the second members is attached to the panel and the other second member merely "can receive" a different edge of the same panel. As such, the reference of Lew still anticipates the language of claim 2.

On page 11 of Remarks, Applicant argues that in claim 3, "the joint is not claimed, its manner of use is claimed." It is unclear as to how this argument reflects the subject matter claimed in claim 3 as there does not appear to be any "use" claimed. Furthermore, patentability is assessed with respect to the recited structure in the claim and not the use of a structure.

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On pages 11-12, Applicant further argues that Lew does not describe "ornamentation on either end of...of his first [member]." However, Lew indeed discloses ornamentation, which is used to hide an unused conduit or channel and provide in order, which would obviously provide an aesthetically pleasing side.

Applicant's argument regarding the definitions of "functional" and "conduit" in claims 6 and 7 are considered moot as such amendment to the specification constitutes as new matter not previously disclosed in the originally filed disclosure. Furthermore, the words of a claim should be given their "plain meaning" absent any indication that their use in a particular context changes their meaning.

On page 12 of Remarks, Applicant argues the mortise of Lew as claimed in claim 11 is "not comprised of two pieces." However, claim 11 does not state the limitation of "two pieces" and instead recites that the mortise is comprised of "two separate members." The mortise of Lew is indeed comprised of two separate, i.e. individual and distinct, members (A) which are individual and distinct from each other and separated by a member in between. As such, the mortise of Lew indeed comprises two separate members that receive a tenon.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine T. Cajilig whose telephone number is (571) 272-8143. The examiner can normally be reached on Monday - Friday from 9am - 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CTC/
9/12/07

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